

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

CEVA LOGISTICS  
Employer

and

Case No. 5-RC-16452

TEAMSTERS LOCAL 570, a/w  
International Brotherhood of  
Teamsters,  
Petitioner

*Tanja L. Thompson, Esq.,  
(Kiesewetter, Wise, Kaplan, Prather, PLC)  
Memphis, Tennessee, for the Employer.  
James R. Rosenberg, Esq., (Abato, Rubenstein  
and Abato, P.A.) Baltimore, Maryland,  
for the Petitioner.*

DECISION

ARTHUR J. AMCHAN, Administrative Law Judge. This case was heard in Baltimore, Maryland on August 23, 2010. The Employer and Petitioner filed briefs on August 30, 2010.

The issue before me is whether the Employer engaged in objectionable conduct during the critical period between Petitioner's filing of its representation petition on May 20, 2010 and the July 11, 2010 representation election which would warrant the Board ordering a second election. In the July 11 election, 7 votes were cast for the Petitioner and 11 against it in a unit described as follows:

All full-time and regular part-time drivers, including remote drivers, yard jockeys, and dock leads employed by the Employer to service the Toyota Parts Warehouse located in Glen Burnie, Maryland, excluding all temporary employees, leased employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

On July 14, Petitioner filed four timely objections to conduct affecting the results of the election. The Regional Director overruled 3 of the 4 objections. He directed that a hearing be held on objection one; that during the critical period, the Employer, by its supervisors and agents, interrogated employees about their support for the Petitioner.

Petitioner presented the testimony of one witness in support of objection 1. James Brown, a truck driver for the Employer, was the Petitioner's observer at the July 11 election. Brown testified that on May 21, the day after Petitioner filed its representation petition, Dave Clark, Respondent's General Manager at the Glen Burnie, Maryland site, handed him a letter, Employer Exhibit 1.

That letter, which is dated May 17, 2010, warns the employer's employees to read the petitioner's authorization cards closely before signing one. It also strongly suggests that if they do so, they would not sign an authorization card. Brown testified that as Clark gave him the card, he asked Brown what he thought of the Union.

Clark testified that he gave Brown this letter on about May 19, and that he did not ask Brown what he thought about the Union, or anything similar, at this time or at any time. Employer's Exhibit 7, an email dated May 19, provides some corroboration for Clark's testimony as to the date the letter was distributed.

Clark testified that prior to distributing the letter, he had been trained by the Employer's Director of Labor Relations on how and why to avoid making threats, conducting interrogations, making promises and spying on employees' union activities. Clark testified that he rarely said anything to Brown, other than to greet Brown when he reported to the Glen Burnie site.

James Brown also testified that approximately two weeks after May 21, he attended a union meeting at a Golden Corral restaurant with four other of the employer's drivers. On direct examination, Brown testified in response to a leading question from the Union's counsel that his conversation with Clark, "came up" in that meeting and that he described his conversation with Clark, "in the same way that you described it to us today?", Tr. 10.

On cross-examination, Brown testified that Sean Cedenio, a union organizer, asked if anyone mentioned anything about the Union. Brown said he responded. He testified that, "I said what do you think about it, and that was it." Brown also testified that another driver, Angelo Jackson, "said he asked everybody that question." Thus on cross-examination, Brown failed to clearly identify Clark as his interrogator. Brown was the petitioner's only witness and there isn't any corroboration for his testimony.

I decline to credit any of Brown's testimony on material issues of fact. First of all, I find it no more credible than that of Clark. Secondly, when Respondent's counsel asked Brown how he could be so sure of the date that Clark gave him the letter, he testified that he made a note of it. However, he did not bring this note with him to the hearing. I conclude that if Brown had any documentation to support his testimony, he would have brought it to the hearing. Petitioner had to anticipate that Clark would controvert Brown's testimony and I infer that it would have advised him to bring anything with him that might tend to bolster his testimony. Third, Employer Exhibit 7 tends to corroborate Clark's testimony that he distributed Employer Exhibit 1 on May 19, before the representation petition was filed.

I also decline to credit Brown's testimony concerning his dissemination of the alleged interrogation at the Golden Corral, in part due to the petitioner's reliance on a blatantly leading question in eliciting this evidence. Finally, I believe that if Clark interrogated Brown about his union sympathies, he would also have interrogated other employees. From petitioner's failure to present other witnesses to corroborate Brown's testimony, I infer that Clark most likely did not inquire as to the union sympathies of any employee.

### *Conclusion*

I recommend that the Petitioner's Objections to the Employer's Alleged Conduct affecting the outcome of the election be overruled and the results of the election be certified.

RECOMMENDED CERTIFICATION OF RESULTS OF ELECTION

It is certified that a majority of the valid ballots has not been cast for Teamsters Local  
Union No. 570, a/w International Brotherhood of Teamsters, and that it is not the exclusive  
5 representative of the bargaining unit employees.

Dated at Washington, D.C. this 7th day of September 2010.

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Arthur J. Amchan  
Administrative Law Judge

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